

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF VETERANS AFFAIRS

Dennis Goeman,
Petitioner,

vs.

Independent School District #2180,
MACCRAY School,
Respondent.

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge George A. Beck on Monday, September 18, 2000 in the Assembly Room of the Courthouse in Montevideo, Minnesota. The record closed upon the completion of the hearing that day.

Dennis L. Goeman, 504 Mason Street, Raymond, Minnesota 56282, appeared representing himself. Patricia Maloney, Esq., of the firm of Ratwik, Roszak & Maloney, P.A., 300 Peavey Building, 730 Second Avenue South, Minneapolis, MN 55402, appeared on behalf of Independent School District #2180.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Veteran's Affairs will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Bernie Melter, Commissioner, Department of Veterans Affairs, 20 West 12th Street, Suite 200, St. Paul, MN 55155 to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this case is whether the Petitioner's Veterans Preference rights have been violated and, if so, what is the appropriate remedy.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Petitioner, Dennis Goeman, is an honorably discharged veteran entitled to the protection of the Veterans Preference Act.

2. Mr. Goeman was employed as a bus driver on a part-time basis by the MCCRAY School District from 1984 to the spring of 2000, at which time his position was discontinued by the MCCRAY School Board.

3. As a part of its annual financial review, the school board asked Superintendent Jim Lentz to look at the school district's transportation expenses which appeared to the Board to be out of line with the state aid received for transportation.

4. Because the school district is a consolidation of three prior school districts and stretches from Granite Falls to Willmar, the transportation costs are significant.

5. The Superintendent looked at whether or not a private vendor might be able to provide transportation services at less expense to the district. An independent auditor was consulted who determined that the school district could save \$250,000 over a five year period by contracting with a private vendor.

6. At its April 24, 2000 meeting the MACCRAY School Board voted to accept a three year bid from a private vendor, Palmer Bus Company, for the district's transportation requirements.^[1]

7. The school district sent Mr. Goeman a letter dated May 3, 2000 to advise him that the school board had voted to sell the school district buses and to subcontract busing services to a private vendor. It stated that all school bus driver positions had been discontinued and all bus drivers would be laid off at the close of the 1999-2000 school year. Approximately eight bus drivers were laid off. The letter also advised Mr. Goeman of his veteran's preference rights including the right to this hearing.^[2]

8. Under the terms and conditions of employment for non-certified personnel with the MACCRAY School District, Mr. Goeman received a 1999-2000 salary of \$8,140.00 for three hours of work per day and received no insurance. He was entitled to sick leave of nine days during the school year accumulative to 63. The terms and conditions of employment had no provision allowing employees to cash in sick leave.^[3]

9. None of the non-certified personnel employed by the MACCRAY School District are entitled to payment for sick leave under their terms and conditions of employment.^[4] No employee has received a cash payment for accumulated sick leave upon leaving employment.

10. At its meeting on May 8, 2000 the school board voted to amend the minutes of the April 24 meeting to make it clear that the acceptance of the Palmer bus bid included the sale of the district's school buses.^[5]

11. On May 17, 2000, Mr. Goeman called Superintendent Lentz and inquired about payment for his accumulated sick leave. Superintendent Lentz advised him that

the contract did not provide for payment for accumulated sick leave but indicated that Mr. Goeman could appear before the school board if he wished to do so.

12. Mr. Goeman appeared before the school board on June 12, 2000 and asked to be paid for his accumulated sick leave.^[6] At its July 24, 2000 meeting the school board voted to deny Mr. Goeman's request.^[7]

13. At the time his position was discontinued, Mr. Goeman had accumulated 63 days of sick leave. Based upon his salary, he would receive \$2,981.16, if he were entitled to be paid for this sick leave.

14. Mr. Goeman is presently 60 years of age. Had he continued to work as a school bus driver for the school district until age 65, his monthly PERA retirement benefit would have increased from \$153.00 to \$282.00.^[8] This would mean that he would receive an additional \$15,000 of retirement benefits if he lives to age 75.

15. Mr. Goeman is a self-employed plumber and drove school bus in part to obtain sick leave and PERA benefits.

16. Mr. Goeman did not apply to the Palmer Bus Company to serve as a school bus driver because the salaries were less than that paid by the school district.

17. The school district has hired personnel such as educational assistants since Mr. Goeman was laid off. These positions would provide PERA benefits, but would be a lower salary than Mr. Goeman received.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Veterans Affairs and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. § § 14.50 and 197.481.

2. That the Notice of Hearing issued by the Department of Veterans Affairs was proper and that all substantive and procedural requirements of law and rule have been met.

3. Mr. Goeman's petition to the Commissioner of Veterans Affairs was timely.

4. Petitioner is an honorably discharged veteran entitled to the protections of Minn. Stat. § 197.46, the Veteran's Preference Act.

5. That Independent School District #2180 is a political subdivision of the State of Minnesota for the purposes of Minn. Stat. § 197.46.

6. That Minn. Stat. § 197.46 prohibits removal of a veteran from public employment except for incompetency or misconduct shown after a hearing, upon due notice and upon stated charges in writing. The burden of proof is upon the petitioner to prove by a preponderance of the evidence that he was terminated in violation of Minn. Stat. § 197.46.

7. Public employers may abolish positions, notwithstanding the Veteran's Preference Act, if the abolition of a position is in good faith and for a legitimate purpose. A Respondent has the burden of proof to establish that a position was abolished in good faith.

8. That the Petitioner was removed from his position without a hearing upon due notice and stated charges for purposes of Minn. Stat. § 197.46.

9. That the Petitioner was not terminated for incompetency or misconduct.

10. That the Respondent, ISD #2180, abolished Mr. Goeman's position in good faith for financial reasons.

11. The Respondent has not denied the Petitioner's rights provided to him by Minn. Stat. § 197.46.

12. These conclusions are made for the reasons set out in the Memorandum that follows which is incorporated into these Conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the Commissioner of Veteran's Affairs Order that the Petition of Dennis L. Goeman be DENIED.

Dated this 21st day of September 2000.

GEORGE A. BECK
Administrative Law Judge

Reported: Tape-recorded-No Transcript
Prepared.

NOTICE

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The Veterans Preference Act provides that no veteran employed by a school district may be removed from employment except for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges, in writing. However, the Minnesota Supreme Court has held that the statute does not prevent a public employer from terminating the employment of a veteran by abolishing the veteran's position, if the action abolishing the position is taken in good faith and for some legitimate purpose, and is not a mere subterfuge to oust the veteran from his position.^[9] Whether the abolishment of a position was done in good faith is a question of fact.^[10] The burden of proof is upon the employer to establish the affirmative defense of good faith abolishment of a position.

The record in this case demonstrates that the employer's action was taken in good faith. In the light of financial difficulties, the school board asked the superintendent to investigate the possibility of terminating all of the bus drivers and selling the buses owned by the school district. The school board decided to contract the transportation for the school district to a private vendor and therefore laid off all of the bus drivers, including the Petitioner. The Petitioner was treated in this regard the same as all of the other people in his job classification. The record indicates that he was regarded as a good employee and there was no question of misconduct or incompetency.

Mr. Goeman argued at the hearing that the school board had proceeded with other expenditures, such as the paving of a parking lot recently, and suggested that this money could be used to keep the bus drivers. However, the district is required to proceed with ongoing maintenance and that obligation does not preclude a legitimate

plan to effect savings in other areas. Because of the large geographical area of this district, transportation is a significant area of expenditure and was identified by the Board as an area for potential savings. Therefore, the record does not demonstrate that abolishing the school bus driver positions was a subterfuge design to oust the Petitioner from his position. Rather, it was part of a overall plan by the school board to reduce expenses for the district and it affected all bus drivers.

Mr. Goeman's petition indicates that he seeks to recover the accumulated value of his sick leave. He argues that this sick leave was to be used in lieu of an insurance policy and that he is entitled to the cash equivalent of the unused sick leave he accumulated of 63 days. Since no violation of the Veteran's Preference Act has been established, Mr. Goeman is not entitled to any award of damages. However, there does not appear to be any provision in the Petitioner's terms and conditions of employment which would allow him to claim the cash value of his sick leave upon separation from employment. At the hearing the employee also claimed a loss of his pension benefits due to being terminated five years sooner than he anticipated. Again, there is no basis for an award of damages in this regard since the school district cannot guarantee an employee continued employment to retirement age.

The normal remedy in a veteran's preference hearing where the employer has violated the Veteran's Preference Act is to reinstate the employee with back pay or other benefits which would continue until such time as the employer complies with the Act. Compliance usually occurs upon providing the employee a discharge hearing. In this case, however, the Petitioner seeks a benefit which he believes he is entitled to under his contract. His remedy would be more properly pursued in court or through the Bureau of Mediation Services.

G.A.B.

^[1] Ex. 1, Ex. 6.

^[2] Ex. 2.

^[3] Ex. 3, Ex. 4.

^[4] Ex. 5.

^[5] Ex. 7.

^[6] Ex. B.

^[7] Ex. C.

^[8] Ex. A.

^[9] State ex rel. Caffrey v. Metropolitan Airports Commission, 246 N.W. 2d 637, 639 (Minn. 1976).

^[10] State ex rel. Niemi v. Thomas, 27 N.W. 2d 155, 157 (Minn. 1947).